

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

UNITED STATES OF AMERICA	§	
	§	
V.	§	CRIMINAL NO. H-08-380-1
	§	
JOSE OSUALDO MARTINEZ MOLINA	§	

REPORT AND RECOMMENDATION

Before the court, by referral pursuant to 28 U.S.C. §636(b), is the matter of the re-arraignment of Jose Osualdo Martinez Molina, the Defendant in this action. The court, having addressed the Defendant personally in open court, now submits this report and recommendation.

On August 21, 2008, Defendant Jose Osualdo Martinez Molina appeared with counsel before the undersigned magistrate judge to enter a plea of guilty to Count 1 of the Indictment charging him with illegal reentry into the United States after deportation and after conviction of an aggravated felony, in violation of 8 U.S.C. §§ 1326(a) and 1326(b)(2).

Defendant Jose Osualdo Martinez Molina consented in writing to plead guilty before a United States magistrate judge. The court explained the range of punishment with regard to imprisonment, fines, restitution, supervised release, and the statutory fee assessment pursuant to the Victims of Crime Act. The court further explained to the defendant that he is subject to sentencing after reference to the sentencing guidelines promulgated by the United States Sentencing Commission. The court also explained that parole had been abolished and defendant could receive a term of supervised release. After conducting said proceeding in the form and manner prescribed by Rule 11 of the Federal Rules of Criminal Procedure, this court makes the following findings of fact:

1. That the Defendant Jose Osualdo Martinez Molina, after consultation with counsel of record and with the approval of the government, has knowingly and voluntarily consented to be advised of his rights and to enter a plea of guilty before a U.S. magistrate judge subject to final approval and imposition of sentence by United States District Judge Lee H. Rosenthal.
2. That the Defendant Jose Osualdo Martinez Molina is fully competent and capable of entering an informed plea, that he is aware of the nature of the charges, the maximum punishment range, and the consequences of his plea, that pursuant to his plea of guilty he is waiving certain valuable rights, that the sentencing judge is not bound by any recommendation on sentencing made by either counsel for the government or counsel for the defendant, that if a recommendation on sentencing is not followed by the sentencing judge, Defendant may not withdraw his plea of guilty, and that his plea of guilty is a knowing and voluntary plea supported by an independent basis in fact containing each of the essential elements of the offense charged in Count 1 of the Indictment.

Based upon the foregoing findings, it is the RECOMMENDATION of the undersigned that the guilty plea of Defendant Jose Osualdo Martinez Molina to Count 1 of the Indictment be ACCEPTED by the court and that Jose Osualdo Martinez Molina be adjudged guilty of the offense alleged in Count 1 of the Indictment, to wit: illegal reentry into the United States after deportation and after conviction of an aggravated felony, in violation of 8 U.S.C. §§ 1326(a) and 1326(b)(2).

The Clerk shall send copies of this Report and Recommendation to the respective parties who have ten (10) days from the receipt thereof to file written objections thereto pursuant to General Order 2001-6. Failure to file written objections within the time period mentioned shall bar an aggrieved party from attacking the factual findings and legal conclusions on appeal.

The original of any written objections shall be filed with the United States District Clerk, P.O. Box 61010, Houston, Texas, 77208. Copies of such objections shall be mailed to opposing

parties and to the chambers of the undersigned, 515 Rusk, Suite 7007, Houston, Texas 77002.

SIGNED at Houston, Texas, this 21<sup>st</sup> day of August, 2008.

  
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MARY MILLOY  
UNITED STATES MAGISTRATE JUDGE